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C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 003646

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SUBJECT: CAPRILES ACQUITTED ON ALL CHARGES

REF: CARACAS 3585 AND PREVIOUS

CARACAS 00003646 001.2 OF 002

Classified By: Robert Downes, Political Counselor,  
for Reason 1.4(b).

¶1. (C) SUMMARY After four years and eight months, Baruta Mayor Henrique Capriles Radonski was acquitted December 15 of all charges stemming from incidents at the Cuban Embassy on April 12, 2002. The opposition mayor of Baruta municipality (a metropolitan Caracas borough where the U.S. Embassy resides) was exonerated amongst cheers, tears, and fireworks. Poloff, joined by a representative from the German Embassy, attended the last session of the trial on December 15. While the judge's ruling was legally sound, it is as yet unclear whether the ruling signals the BRV's desire to steer clear of a legally dubious road ahead, or whether the BRV will vigorously appeal and continue the politically-motivated torment of Capriles. END SUMMARY

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THE BRV'S ARGUMENT  
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¶2. (U) Henrique Capriles Radonski, the youthful, charismatic mayor of Baruta municipality faced several charges involving his role in the events at the Cuban Embassy on April 12, 2002. The crux of the government's case was that Capriles intentionally fomented violence in front of the Cuban Embassy as a pretext for illegal entry into the compound to confirm that the Cubans were harboring members of Chavez's just-deposed cabal who may have been seeking asylum. The BRV also charged Capriles with failure to adhere to constitutional principles to uphold obligations under international conventions, in this case the Vienna Convention and security of diplomatic missions.

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CAPRILES'S ARGUMENT  
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¶3. (U) Capriles asserted that he was invited to the Cuban Embassy by Ambassador German Sanchez Otero (conspicuously absent from the trial's proceedings) to assist in defusing the situation. Capriles argued that his entry was facilitated by Embassy personnel and his intentions were never other than to mediate the crisis. His defense was aided by the fact that Capriles took a film crew with him to the Embassy, which captured on tape the Cuban Ambassador thanking Capriles for coming. The prosecution's attempt to

selectively use excerpts from the same tape damaged, more than helped, its case. The defense also argued that the responsibility to ensure the security of diplomatic missions under the Vienna Convention falls to the federal government, not to the municipality wherein the mission resides.

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CHARGE #1: ILLEGAL ENTRY - DROPPED BY THE PROSECUTION  
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¶4. (U) Following hours of testimony during which the prosecution presented only a single witness - a video expert subsequently discredited on cross examination - and interminable viewings of the same videos, the prosecution announced that it was dropping the charge of unlawful entry. The prosecution acknowledged that the testimony and videos presented overwhelming evidence that Capriles's entry into the compound was invited and facilitated by Cuban Embassy personnel.

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CHARGE #2: USURPATION OF THE PEOPLE'S WILL - ACQUITTED  
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¶5. (U) Regarding the charge of inciting unrest, the government argued that Capriles manipulated the will of the people (by fomenting protest) to gain entry into the compound. According to the prosecution, the protests were the pretext for Capriles to get inside to seek out members of the Chavez regime (having just suffered a coup d'etat) who may be seeking asylum. The judge, Auristela Salazar de Maldonado, was not swayed. Evidence clearly showed that Capriles held a cordial, conciliatory conversation with Cuban Ambassador Sanchez, and never deviated from seeking mediation.

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CHARGE #3: VIOLATION OF CONSTITUTIONAL PRINCIPLES - ACQUITTED  
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¶6. (C) Capriles told Poloff that he is the first Venezuelan ever to be charged in his country for the crime of "violating constitutional principles." The BRV argument was that, as mayor of the municipality where the Cuban Embassy resides, Capriles failed to uphold the BRV's obligations delineated in the Vienna Convention to ensure the security of diplomatic missions. The defense successfully presented a two-pronged argument: first, that this responsibility rests with the federal government; and second, that such international conventions have mechanisms in place for these grievances that involve the International Court of Justice. As such, the prosecution (the BRV) had no legal cause and the court had no standing to hear this grievance.

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THE CAPRILES TRIAL BY THE NUMBERS  
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1,707 - days between events of 4/12/02 and verdict (4 years, 8 months, 3 days)  
119 - days spent in jail in 2004 without a trial  
30 - judges who have presided over the case  
22 - witnesses called in the trial  
21 - witnesses called by the defense  
8 - letters shaved into the back of Capriles's head to send a message ("J-U-S-T-I-C-I-A")  
7 - charges initially levied against Capriles  
4 - maximum sentence, in years, Capriles faced per charge  
3 - number of charges pending at trial's commencement  
2 - number of charges prosecutors pursued to verdict  
1 - number of charges dropped by the prosecution on the final day of trial  
0 - convictions  
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## WHAT'S NEXT FOR CAPRILES?

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¶7. (C) Screams of joy emanated from the Courthouse and fireworks blasted in Baruta municipality as word of the verdict spread. Amidst sighs of relief and tears of happiness, Capriles delivered what is hopefully the last of his post-trial press conferences. Capriles is an up-and-comer in the Primero Justicia party (he has been accompanied by Julio Borges at nearly every trial appearance), re-elected in 2004 (while facing these charges) by 80% of the electorate, and can now return to his mayorship perhaps with this sword of Damocles no longer hanging over his head.

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COMMENT  
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¶8. (C) The prosecution of Henrique Capriles Radonski was clearly a politically-motivated trial, and Capriles spent four months in pre-trial solitary detention early in the process. Nevertheless, the conclusion of this show trial deprives Capriles of a major stage on which he excelled in bolstering his image. He will now have to rely more on his governance and less on his martyrdom to remain a major player in Venezuelan politics for years to come; Capriles detractors doubt he will find success in the former. The BRV, on the other hand, comfortable in its electoral victory and lacking legal bases to stand on, may have wisely decided to let this one go. However, this remains unclear. The prosecution will undoubtedly appeal the verdict, either pro forma or as a continuation of its efforts to derail (or destroy) a future political rival.

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